

CALIFORNIA GAMBLING CONTROL COMMISSION

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Initial Statement of Reasons

California Code of Regulations, Title 4. Business Regulations
Division 18. California Gambling Control Commission

Licensing Issues (Withdrawals, Denials)

❖ **All licensees: Withdrawal of Application,
Abandonment of Application, Appeal of Denial**

❖ **Gambling Establishment Owner Licensees/Key Employees:
Mandatory & Discretionary Grounds for Denial**

The Gambling Control Act¹ provides the California Gambling Control Commission (hereafter, "Commission") the authority to issue licenses concerning gambling operations at gambling establishments.

This jurisdiction includes work permit holders, holders of findings of suitability or approvals, key employee licensees, registrants, licensees, and owner licensees of gambling establishments. The intent of such authority is to make sure that the industry maintains a good reputation, does not cheat or harm the public, and is made up of people of good character. The Commission's mandate is to ensure that the public is protected, and that any criminal or corruptive elements are excluded from the industry. The Commission performs that mandate by working in concert with the Department of Justice, Division of Gambling Control (hereafter, "Division").

The Gambling Control Act is "an exercise in the police power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes."² The Legislative Findings and Declarations of the Gambling Control Act, Business and Professions Code, section 19801, subdivision (f), states:

Public trust that permissible gambling will not endanger public health, safety, or welfare requires that comprehensive measures be enacted to ensure that gambling is free from criminal and corruptive elements, that it is conducted honestly and competitively, and that it is conducted in suitable locations.

¹ Business and Professions Code, section 19800 et seq.

² Business and Professions Code, section 19971.

The Commission is tasked with carrying out this legislative intent and

- Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.³
- Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.⁴

Section 12002. General Definitions.

Subsection (g) of this regulation is being amended to allow for a designation of the Executive Director's duties. This clarifies the delegation of certain functions and continuation of duties being performed should the position become vacant. Pursuant to Government Code section 7:

Whenever a power is granted to, or a duty imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code provides otherwise.

This definition revision thus clarifies that the Executive Director may delegate, in accordance with the Government Code. Because the question arises with some frequency, it is important to stress in the definition for purposes of clarity.

Section 12047. Withdrawal of Applications.

and Section 12048. Abandonment of Applications.

In some instances, a person will apply for licensure but not remain employed by a gambling establishment or provider of proposition player services. A person may move out of state and neither Commission nor Division staff is able to reach the person to answer follow-up questions on an application. These regulations seek to stop the application process and background investigation and perhaps generate a refund of background investigation deposits, if appropriate. In the interests of cost-efficiency and time management, allowing a person to withdraw an application or allowing Division or Commission staff to determine that an application is abandoned will give staff the opportunity to focus on applications for persons who remain employed and wish to be licensed. Business and Professions Code section 19869 contemplates the withdrawal of an application, but also gives the Commission the authority to deny the request and have the Division complete a background investigation should the request not be consistent with the public interest and the policies of the Gambling Control Act.

As in general usage, "days" refers to calendar days unless otherwise specified.

³ Business and Professions Code, section 19823, subdivision (a)(1).

⁴ Business and Professions Code, section 19823, subdivision (a)(2).

Section 12050. Denial; Appeal of Denial of application for license, registration, permit, or finding of suitability.

The Gambling Control Act provides for the Commission to grant or deny licensure requests. A regulation detailing the process for denial and appeal of a denial is necessary so that applicants understand and can use their due process rights.

Pursuant to Business and Professions Code, section 19826, the Division is charged with investigating applicants for licensure under the Gambling Control Act. If the Division, as a result of an investigation, determines that a license, permit, finding of suitability, or approval should be not be issued, the Division issues a recommendation to the Commission. This regulation would ensure that a Division or Commission staff recommendation for denial is communicated to the applicant, and that the applicant is afforded the opportunity to be heard.

An evidentiary hearing concerning a denial may be heard by the Commission under the Gambling Control Act⁵ or may be forwarded to the Office of Administrative Hearings under the Administrative Procedure Act⁶, in the discretion of the Commission⁷. In the former instance, rules are laid out in this proposed regulation to implement Business and Professions Code sections 19870 and 19871. The regulation provides further details concerning the conduct of the hearing, including witnesses, evidence, creating a record, and issuing a written decision.

Judicial review is also specified for applicants who want to appeal a final decision of denial.

As in general usage, "days" refers to calendar days unless otherwise specified.

Section 12348. Mandatory and Discretionary Grounds for Denial of Application for a State Gambling License or Key Employee license.

Business and Professions Code sections 19852, 19857, 19858, 19859, 19860, 19863, 19880, and 19890 provide statutory directives for mandatory denials of applications concerning gambling establishment owner licensees or key employees. The sections are listed here as guidance for those seeking licensure. The Commission may also deny an application on discretionary grounds, and those are listed in subsection (b) of this proposed regulation.

Because of the high scrutiny required by the Gambling Control Act for persons working in the area of controlled gambling, subsection (b)(3) contains items that point toward a person's character and trustworthiness.

⁵ Business and Professions Code, sections 19870 and 19871.

⁶ Government Code, section 11500 et seq.

⁷ Business and Professions Code, section 19825..

Labor Code 450 is mentioned in subsection (b)(3)(C), and is as follows:

- (a) No employer, or agent or officer thereof, or other person, may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of any thing of value.
- (b) For purposes of this section, to compel or coerce the purchase of any thing of value includes, but is not limited to, instances where an employer requires the payment of a fee or consideration of any type from an applicant for employment for any of the following purposes:
 - (1) For an individual to apply for employment orally or in writing.
 - (2) For an individual to receive, obtain, complete, or submit an application for employment.
 - (3) For an employer to provide, accept, or process an application for employment.

This section is important to include to make sure gambling enterprise employees are not being paid to gamble or forced to gamble with their own money to keep a game going, as these types of actions bring up many issues concerning "house banking."

As in general usage, "days" refers to calendar days unless otherwise specified.

Required Determinations

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATIONS AND REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission is not aware of any reasonable alternatives that would as effectively achieve the regulatory purpose of processing or denying applications under the Gambling Control Act.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Commission is not aware of any reasonable alternatives that would lessen any adverse impact on small businesses.

IMPACT ON PRIVATE PERSONS

The Commission is not aware of any reasonable alternatives that would be more effective or as effective and less burdensome to private persons.

IMPACT ON BUSINESS

The Commission has made a determination that the proposed regulatory changes will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.